IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

OT.Appeal.No. 2 of 2007()
(ORDER NO.C8.49909/05/CT DATED 15-05-06 OF THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM}

APPELLANT:

ALL KERALA SPLINTS AND VEENERS ASSOCIATION, PUNNUMMONNOOR, ALUMMOODU, KOLLAM, REPRESENTED BY ITS PRESIDENT, V.THANKAPPAN PILLAI.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT:

THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER FOR TAXES
SRI.V.V.ASHOKAN

THIS OTHER TAX APPEAL HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.T.A.No.2 of 2007

Dated this the 13th day of June, 2007.

JUDGMENT

H.L.DATTU, C.J.

The appellant is an association. The members of the association is engaged in the manufacture of splints and Veneers. They are aggrieved by the orders passed by the Commissioner of Commercial Taxes dated 15.5.2006. By the impugned order, the Commissioner has opined as under:

> "The term 'manufacture' is defined under the Kerala Value Added Tax Act, 2003 as:
>
> *" ..... producing, making extracting, altering, ornamenting, finishing, assembling or otherwise processing, treating or adapting any goods and includes any process incidental or ancillary to such activity but does not include any process or mode of manufacture as may be prescribed."*
>
> In view of the above, industrial units approved by the Khadi and Village Industries Commission engaged in the manufacture of splints and veneers for matchers, whether it is using machinery or not, will be covered by Sl.No.55(13) of the 1st schedule to the Act.
>
> It is seen that most KVIB units are making only interstate sales of their products. As per Section 8(1) of the Central Sales Tax Act, 1956, "*The tax payable on*

the interstate sales of goods which are supported by 'C' or 'D' Form shall be 4%. But as per Section 8(2) of the Central Sales Tax Act, 1956, "the tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods in the course of interstate trade or commerce not falling within sub-section (1) in the case of goods, the sale or as the case may be, the purchase of which is under the sales tax law of the appropriate State, exempt from tax generally shall be nil." As per the explanation under the above sub-section "a sale or purchase of any goods shall not be deemed to be exempt from tax general under the sales tax law of the appropriate state, if under that law, the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods."

In the case of the products notified by the Khadi and Village Industries Commission, exemption is available only at the point of sale by the manufacturing units approved by the Kerala Khadi and Village Industries Board. So this is not a general exemption as per sub-section 8(2)(c) of the CST Act 1956 and tax will be attracted in the case of interstate sales of such products in spite of exemption being available under the Kerala Value Added Tax Act on the local sales of such products by the industrial units

specified in Entry 55 of the 1st schedule. So no exemption is allowable in respect of the interstate sales of the products by Kerala Khadi and Village Industries Units."

2. Aggrieved by the clarification/opinion of the Commissioner, the Association is before us in this Tax Appeal.

3. The question of law for consideration and decision by this court is as under:

> "Whether on the facts and circumstance of the case, has not the Commissioner of Commercial Taxes gone wrong in holding that the exemption under Entry 55 (13) of the 1st schedule to the VAT Act is not a general exemption?"

4. This court, while considering W.A.No.932/07 has observed as follows:

> "The State has empowered the Commissioner to issue appropriate circulars to maintain uniformity in the procedure for the purpose of quantification of tax and also in the procedure for levying tax on certain transactions. By virtue of the powers given to the State authorities under Sub-section (2) of Section 9 of the CST Act, the Commissioner, in exercise of his powers, has issued the circular dated 19.4.2006. In view of the above, we are of the opinion that the Commissioner is empowered under the CST Act to issue such circular."

In view of the orders and directions issued in W.A.No.932/07, the question of law raised by the association requires to be answered against the association and in favour of the revenue. The appeal deserves to be rejected and it is rejected. Ordered accordingly.

Sd/-
H.L.DATTU
CHIEF JUSTICE

Sd/-
K.T.SANKARAN
JUDGE

sk/

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P.S. To Judge